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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 DEREK LOWELL KIRK,

Case No. 3:16-cv-00079-MMD-VPC

10 Petitioner,

ORDER

11 v.

12 NEVADA DEPARTMENT OF  
CORRECTIONS, *et al.*,

13 Respondents.  
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15 Before the Court is *pro se* habeas petitioner Derek Lowell Kirk's third motion for  
16 appointment of counsel (ECF No. 24).

17 As this Court previously explained, there is no constitutional right to appointed  
18 counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551,  
19 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint  
20 counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986),  
21 cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert.  
22 denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of  
23 the case are such that denial of counsel would amount to a denial of due process, and  
24 where the petitioner is a person of such limited education as to be incapable of fairly  
25 presenting his claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423  
26 F.2d 948 (8th Cir.1970). The court previously denied Kirk's motions for appointment of  
27 counsel on the bases that the amended petition appears sufficiently clear in presenting  
28 the issues that he wishes to raise, and the legal issues are not particularly complex. In


1 Kirk's third motion, he states for the first time that he suffers from Post-Traumatic Stress  
2 Disorder and that looking at the documents in this case is very painful and has made him  
3 suicidal (ECF No. 24). He presents no support for these assertions. The Court remains  
4 unpersuaded that counsel should be appointed as the petition presents the issues Kirk  
5 wishes to raise with sufficient clarity. However, the current motion for counsel is denied  
6 without prejudice. Kirk may file a renewed motion for appointment of counsel within  
7 fourteen (14) days of the date of this order if he can provide exhibits in support of his  
8 claims that his serious mental health needs warrant appointment of counsel.

9 It is therefore ordered that petitioner's motion for appointment of counsel (ECF No.  
10 24) is denied without prejudice as set forth in this order.

11 It is further ordered that petitioner will have fourteen (14) days from the date of this  
12 order to file a supported, renewed motion for appointment of counsel, if any.

13 It is further ordered that if petitioner chooses not to file a renewed motion for  
14 appointment of counsel, he must file his opposition to respondents' motion to dismiss, if  
15 any, within thirty (30) days of the date of this order.

16 DATED THIS 20<sup>th</sup> day of April 2017.

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19 MIRANDA M. DU  
20 UNITED STATES DISTRICT JUDGE  
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